U.S. Department of Labor Occupational Safety & Health Administration Houston North Area OSHA Office 507 N. Sam Houston Pkwy E., Suite 400 Houston, TX 77060



Reply to the attention of Office of Whistleblower Protection

September 21, 2010

Regional Administrator (Al Armendarez) U.S. Environmental Protection Agency Fountain Place, 13th Floor, Suite 1 1445 Ross Avenue Dallas, TX 75202-2733

Re: Southwest Oklahoma Development Authority/Bennar/6-3550-10-027

Dear Mr. Armendarez:

The above referenced matter is a complaint of discrimination under one or more of the Environmental Protection Agency statutes.

Enclosed is a copy of the complaint for your information and assistance. Complainant and Respondent are being notified of the investigative procedures of this office under separate cover.

If you require additional information regarding this matter, please do not hesitate to contact me at: 512-34-0590; or you may contact the Regional Investigator assigned to this matter (named below).

Sincerely,

Anthony Incristi

Regional Supervisory Investigator

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Enclosure: Copy of complaint

Regional Investigator:

Ronald C. Richards

OSHA Houston North Area Office

507 N. Sam Houston Pkwy E., Ste 400

Houston, TX 77060

Phone: (281) 591-2438 x244

(281) 999-7457 Fax:

Email: Richards.ronald@dol.gov

09-20-2010

David J. Marshall, Partner Direct Dial: 202-299-1146 marshall@kmblegal.com

Line 1

By Electronic Mail September 15, 2010

Ms. Nilgun Tolek
Director, Office of Whistleblower Protection
United States Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW
Washington, DC 20210

Washington, DC 20210 Re: y. Southwestern Oklahoma Development Authority. Dear Ms. Tolek: has retained the law firm of Katz, Marshall & Banks, LLP to represent him with respect to claims he holds against the Southwestern Oklahoma Development Authority ("SWODA") for violation of the anti-retaliation provisions of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1367 ("FWPCA") and the Safe Drinking Water was terminated one week after SWODA Act, 42 U.S.C. § 300(j)-9(i) ("SDWA"). | learned that he had reported illegal wastewater treatment practices on a golf course managed by SWODA to the Environmental Protection Agency ("EPA") and the Oklahoma Department of Environmental Quality ("DEQ"). These unsafe practices not only posed a hazard to golf course patrons and employees, but also resulted in the unlawful discharge of untreated wastewater into tributaries and reservoirs. While an employee at SWODA, repeatedly raised serious public health concerns with his manager and other DEQ-licensed wastewater treatment experts. Specifically, complained that SWODA was violating numerous DEQ regulations for maintenance of a total retention lagoon system that runs through the golf course. These violations resulted in workers' and patrons' direct contact with contaminated effluent and the discharge of untreated or inadequately treated wastewater into the Clinton-Sherman Reservoir and an adjacent creek, which in turn flow into the Little Elk Creek, a source of drinking water for residents of Washita County. Despite these complaints, SWODA took no corrective action for years. Throughout his tenure, took steps to bypass SWODA's standard procedures to ensure that it complied with the law and protected the public and SWODA employees. After becoming DEQ-licensed in April 2010, renewed his efforts to compel management and others refused the proposed to change its wastewater treatment practices, but reforms. Realizing that the utilization of internal channels was fruitless, on August 1, 2010, Mr.

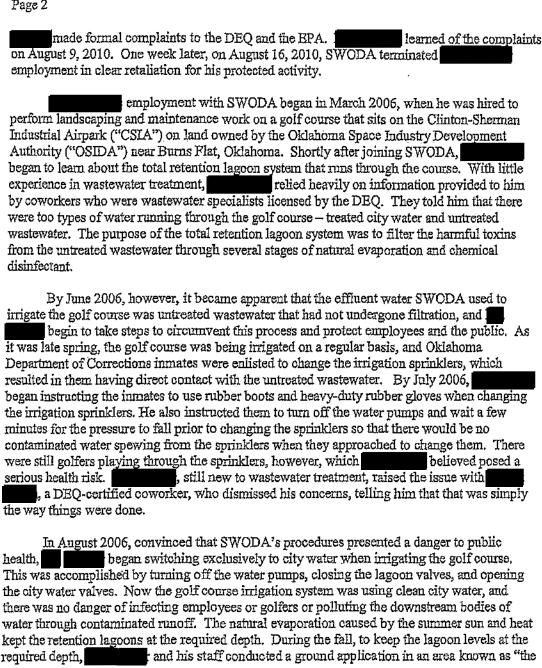
¹ See map of Clint-Sherman Industrial Airpark and surrounding areas, attached as Exhibit 1.

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02:13:45 p.m.

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surrounding areas was well-founded.

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north pasture," where they pumped untreated wastewater into an area designated for such use.² He continued to take the extra steps necessary to ensure that only clean city water was used to irrigate the course.

In the spring of 2007, it became clear to that the air park maintenance crew³ upon whom he had relied for advice, were well aware of the environmental violations taking place on the course but had no intention of addressing them. In March and April 2007, the area was experiencing heavy rains, and the wastewater retention lagoons levels were rising, which posed a serious threat to public health. When raised this issue with the air park maintenance crew, who again were DEQ-licensed, they expressed no concern and indicated that there was no plan in place in the event the retention lagoons continued to rise. On one weekend in April 2007, the lagoons were within inches of breaching. attempted to contact the licensed personnel charged with managing the lagoons, but none returned his calls. Faced with choice between releasing a controlled amount of wastewater onto the course through the sprinklers or allowing the lagoons to overflow - resulting in a much larger-scale disaster - Mr. Bennar chose to run the irrigation sprinklers for a time to prevent a breach. learned that someone had filed a complaint with the On the next workday, local DEQ office regarding the irrigation of the golf course during wet weather. suspected that , who were charged with maintaining the wastewater had attempted to contact over the weekend, had made the facility and whom complaint.4 Later that afternoon, however, was vindicated. Along with , he met with of the local DEO office. Ms. Ledbetter discussed the complaint and asked why Mr. Bennar would turn on all of the sprinklers during a rainstorm, particularly in light of the fact that he was not licensed by the DEQ to make such decisions. explained that he had attempted to contact the licensees to no avail, and he asked whether he should simply have allowed the lagoons to breach. Apparently not taken action, realizing the danger posed to the public health had agreed that he had taken the proper action. No charges or fines were levied against SWODA,

s understanding of the gravity of the situation and the threat to the

² Even in this area, however, was unable to properly conduct a ground application, as SWODA used a large, leaky hose connected to a water cannon in this area, resulting in the saturation of the soil in certain areas and the pooling of untreated wastewater.

³ The air park maintenance crew consists of all SWODA employees who work on the CSIA. They are charged with the complete upkeep of the grounds and buildings, including the golf course water and lagoon systems.

⁴ A person who was not familiar with the irrigation system would not be aware that the water being applied to the golf course was wastewater. That person would simply believe that there was a problem with the system. The complaint, therefore, seems to have been a targeted attempt to discourage from taking independent action to safeguard public health.

✓ Katz, Marshall & Banks, ILP

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After the meeting with procedure for avoiding such threats in the future, but never took it into consideration. Therefore continued to switch from waste water to city water in order to avoid contaminating the grounds and downstream bodies of water during irrigation of the golf course. Despite these efforts, discharges of untreated wastewater occurred nearly every time the lagoons rose due to heavy rains, since and SWODA had failed to implement a plan to deal with such events.
While thought for years that SWODA's handling of wastewater was likely illegal and harmful to humans and the environment, his suspicion was confirmed in March 2010 when he earned a Class D wastewater license from the DEQ. The intense training he received presented information regarding water-borne pathogens, disinfection, illegal discharges and illegal ground applications. The information about the dangers of deficient wastewater treatment practices—along with civil and criminal penalties for failing to comply with DEQ regulations—made realize that he could no longer simply skirt the violations SWODA was committing by attempting to circumvent the illegal practices. As a DEQ-licensed specialist, Metaltic times and the environment, his suspicion was confirmed in March 2010 when he earned a Class D wastewater license from the DEQ. The intense training he received presented information about the dangers of deficient wastewater treatment practices—along with civil and criminal penalties for failing to comply with DEQ regulations—made realize that he could no longer simply skirt the violations SWODA was committing by attempting to circumvent the illegal practices. As a DEQ-licensed specialist, Metaltic times are received presented in the could not be a supplied to the could not be a supp
When he returned from the DEQ training, had a meeting with which he explained in detail the various violations and resulting public health threats occurring on the golf course and the possible consequences of failing to remedy the problems. Receiving no help from had several discussions with about alerting OSIDA, which owns the golf course, about SWODA's mismanagement and arranging for a meeting between OSIDA and SWODA. Agreement and agreed that the situation had to be corrected, but he was concerned about going over the head for fear of retaliation.
By the end of July 2010, the wastewater retention lagoons were again filling up due to heavy rains, and it became increasingly apparent to that he could not correct the numerous environmental violations internally. The prospect of hundreds of thousands of gallons of wastewater breaching the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the theorem is the could not correct the numerous of wastewater breaching the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the lagoons and flowing downstream into public water — not to mention across the golf course where patrons continued to play when the weather permitted — was extremely alarming to the lagoons are patrons of the lagoons and flowing the lagoons are provided to the lagoons are provi
When services learned of the reports on August 9, 2010, he became outraged and repeatedly berated Mr. Bennar. He telephoned to inform him that he was extremely angry that had chosen to report the violations of DEQ regulations and the concomitant threats to public health. On August 10, 2010, he angrily stormed into replied demanding an explanation for his actions. The replied that SWODA simply could not continue to violate DEQ and EPA regulations, and that not only was the public health in jeopardy, but SWODA and individual employees were at risk of suffering civil and criminal penalties. Mr. Anknew continued to insist that SWODA was doing nothing wrong, even in the face of clear evidence to the contrary.

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licensed by the state of Oklahoma in wastewater treatment and was obliged to abide by applicable rules and regulations. It is a specific responded in a hostile manner that was "forcing [his] hand," which took to be an implicit threat to his continued employment. Asked why SWODA could not simply take the necessary steps to come into compliance with applicable rules and regulations, but again warned that he was "forcing [his] hand."
Also on August 10, 2010, again witnessed SWODA employees watering the golf course heavily with untreated wastewater, and, despite threats to his employment, he complained about the practice. Upon arriving at the golf course that morning, rewitnessed inmates changing sprinkler couplers and getting soaked with the untreated wastewater. The particular valve and approached to ask him a question about the location of a particular valve answered the question, but he added that SWODA was again in violation of many environmental rules and regulations. Only response was that SWODA had been using the same practices for 20 years. One hour later, golfers were driving their carts past the sprinklers shooting untreated wastewater and splashing through puddles of the same. Frustrated by management's refusal to take the necessary steps to come into compliance with regulations and protect the public health, returned to his office. The next day, he returned to work with the intention of hand-watering the greens with city water using a 200-gallon tank, only to find that again had used wastewater for watering all of the greens.
After several days of sick leave, returned to work on Monday, August 16, 2010. He hoped that had calmed down and that the two could work to implement best practices for treatment of the wastewater on the CSIA golf course. Instead, informed that SWODA was terminating him. This termination came just one week after had threatened employment specifically on the grounds that he had made complaints to the DEQ and EPA about environmental violations. These DEQ violations included, inter alia:

- Discharges of wastewater in violation of Okla. Admin. Code. § 252:619-1-4 (2005);⁵
- Applications of untreated wastewater to public use areas, i.e., the CSIA golf course, in violation of Okla. Admin. Code § 252:619-3-3 (2005);6
- Failure to maintain and secure the pump station for the total retention lagoon system in violation of Okla. Admin. Code § 252:619-3-1 (2005);⁷

⁵ See Exhibit 2, attached hereto.

⁶ See Exhibit 3, attached hereto.

⁷ See Exhibit 4, attached hereto.

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- Failure to ensure that the lagoons had a minimum of three feet of freeboard space which ultimately resulted in the breaching of the lagoons during heavy rains in violation of Okla. Admin. Code § 252:619-1-4(b) (2005);⁸
- Failure to ensure that the water flow measurement devices necessary to determine how much wastewater or city water is being released were in working order, in violation of Okla. Admin. Code § 252:619-1-4(g) (2005);⁹ and
- Cross-connections between potable water supplies and wastewater from the total lagoon retention system, in violation of Okla. Admin. Code § 252:619-1-4(c) (2005).

In terminating employment after he raised serious concerns about violations of DEQ wastewater treatment regulations that resulted in serious threats to public health and the contamination of downstream waterways, SWODA is liable under the anti-retaliation provisions of the Safe Drinking Water Act of 1974, 42 U.S.C. § 300j-9(i) ("SDWA") and the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1367 ("FWPCA"). SWODA's unlawful conduct has caused significant financial harm, damage to his career and professional reputation, as well as anxiety and emotional distress. Based on these facts, requests that OSHA investigate this matter, issue a finding that SWODA has engaged in unlawful retaliation against him, and award an appropriate remedy.

Thank you for your assistance in this matter. Please do not hesitate to contact me or Michael Filoromo of this firm if you have any questions or concerns or need additional information for your investigation of National claims.

Sincerely,

David J. Marshall

Attachments

CC:

Regional Director, OSHA Region 6 (by facsimile)

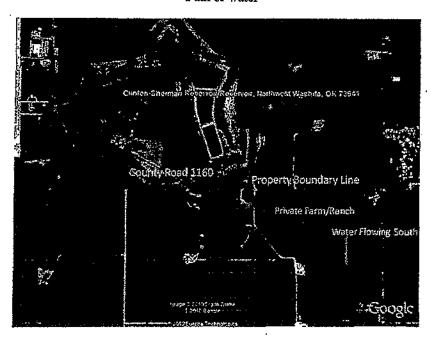
⁸ See Exhibit 5, attached hereto.

⁹ See Exhibit 6, attached hereto.

¹⁰ See Exhibit 7, attached hereto.

Line 1

Exhibit 1
Path of water



The Clinton-Sherman Reservoir, located on the golf course, is the primary source of water flowing south from the golf course. Above the word "Clinton" in the satellite view above is an overflow basin. A wide creek runs parallel to the reservoir and the three retention lagoons on the course. The creek in turn flows under County Road 1160 onto private property, where it forms a small pond. That pond runs into Little Elk Creek, which runs into Lake Hobart.

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Exhibit 2
Illegal Discharges in violation of Okla. Admin. Code. § 252:619-1-4



This three-inch hose discharges untreated wastewater onto the "north pasture" described on p. 2. Due to numerous leaks in the hose, the water spewed in all directions.



This pooled water in the north pasture consists of untreated wastewater. After a ground application or heavy rainfall, this wastewater flowed and pooled on the fairway and near the green of the fifth hole of the golf course, ultimately flowing downhill into a creek.

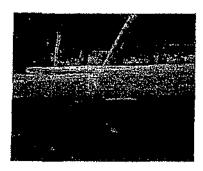


This is the valve used to drain one of the total retention lagoons – untreated due to a lack of chlorination and disinfecting – into a pond on the golf course.

Line 1

Exhibit 3

Applications of untreated wastewater to public use areas in violation of Okla. Admin. Code § 252:619-3-3





These two photos show the application of untreated wastewater to greens and fairways during normal business hours, which exposes employees and golfers to contact through wind-blown water and puddles.



Above is the pump house for the golf course, which lacks a chlorinator to disinfect water prior to irrigation. Prior to the DEQ investigation in August 2010, SWODA had purchased no chlorine since the summer of 2006. The barrel pictured above was part of that purchase, but due to the lack of a chlorinator, it went unused for four years.

Line 1

Exhibit 4

Failure to maintain and secure the pump station for the total retention lagoon system in violation of Okla. Admin. Code § 252:619-3-1



The outside of the pump house is overgrown with weeds, making it a haven for snakes, spiders and scorpions. The white water tank on the right has been closed off since the summer of 2009 because of a leak. A large hole was dug with a backhoe and remains uncovered and unrepaired.



Inside the pump house, there are dangling, exposed electrical wires; a missing panel on a three-phase power supply; and a missing exhaust fan on the window. In the foreground is one of two water pumps. The second pump has been out of operation for 6-9 months.



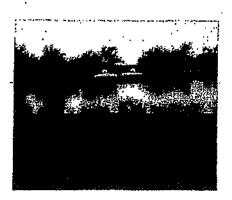
The pump house is unsecured, with no working lock, gate or alarm system. There are no emergency procedures or maintenance schedules to ensure good working order.

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Exhibit 5

Failure to ensure that the lagoons had a minimum of three feet of freeboard space in violation of Okla. Admin, Code § 252:619-1-4(b)

Katz, Marshall & Banks, LLP



Here, the lagoon levels are well above the three-foot freeboard and - as happened on several occasions - are in danger of breaching in the event of heavy rains.

Exhibit 6

Katz, Marshall & Banks, LLP

Failure to ensure that the water flow measurement devices are in working order, in violation of Okla. Admin. Code § 252:619-1-4(g)

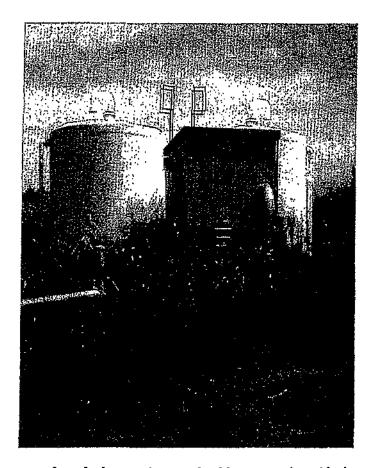


There is no flow measurement device in the pump house. All releases of wastewater and city water are estimated.

Exhibit 7

Cross-connections between potable water supplies and wastewater from the total lagoon retention system, in violation of Okla. Admin. Code § 252:619-1-4(c)

Katz, Marshall & Banks, LLP



In this area, wastewater from the lagoon shares a plumbing connection with city water. The 6-inch city water valves have been leaking badly since early 2009. If the valves are not closed very tightly – which they often are not – there is a clear danger of back-flow contamination as wastewater enters the city water pipes.